

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT CULBERSON,

Defendant.

8:21CR192

ORDER

This matter is before the Court on defendant Robert Culberson’s (“Culberson”) Amended Motion to Suppress (Filing No. 109) all evidence “obtained as a result of the Safe Streets Task Force’s contact with [Culberson] at or near 5335 Curtis Avenue, Omaha, Nebraska, commencing on or about June 14, 2021.” In particular, Culberson seeks to suppress (1) a gun and methamphetamine found in the bushes near that address, (2) the contents of two cell phones obtained pursuant to a warrant, and (3) DNA evidence obtained pursuant to a warrant.

After a motion hearing on April 14, 2022, the magistrate judge¹ issued a Findings and Recommendation (Filing No. 123) recommending the Court deny Culberson’s motion. *See* 28 U.S.C. § 636(b)(1)(B) (authorizing the referral of motions to suppress); Fed. R. Crim. P. 59(b)(1) (same). The magistrate judge ultimately determined Culberson did not meet “his burden of establishing the requisite nexus between his detention and the evidence recovered from the bushy area, or that he has standing to challenge the search of the bushes.” *See United States v. Olivera-Mendez*, 484 F.3d 505, 511 (8th Cir. 2007) (“Evidence should not be excluded from trial based on a constitutional violation unless the illegality is at least a but-for cause of obtaining the evidence.”).

¹The Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

Culberson timely objected (Filing No. 128) to the Findings and Recommendation, challenging both the magistrate judge's "framing of the issue in dispute in the matter" and his findings and conclusions.

Upon careful de novo review of Culberson's objections, *see* 28 U.S.C. § 636(b)(1) (standard of review); Fed. R. Crim. P. 59(b)(3) (same), the Court finds Culberson's Amended Motion to Suppress should be denied. The Court agrees with the magistrate judge that the challenged evidence in this case is not the tainted fruit of an illegal search or arrest. *See, e.g., Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (explaining that in deciding if the exclusionary rule applies, the pertinent question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." (quoting *J. Maguire, Evidence of Guilt* 221 (1959))).

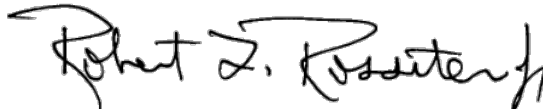
For that reason,

IT IS ORDERED:

1. Defendant Robert Culberson's objections (Filing No. 128) are overruled.
2. The magistrate judge's Findings and Recommendation (Filing No. 123) is accepted.
3. Culberson's Amended Motion to Suppress (Filing No. 109) is denied.

Dated this 11th day of July 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge